SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

A.H. LARSON, et al., Plaintiffs, v. SEATTLE POPULAR MONORAIL AUTHORITY; WASHINGTON STATE and its DEPARTMENT OF LICENSING; and FRED STEPHENS, its Director, Defendants.	)	NO. 04-2-34399-2 SEA ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

In this lawsuit, the plaintiffs have challenged the funding of the Seattle Monorail Project through collection of a Motor Vehicle Excise Tax. Their Complaint sets out five causes of action which can be summarized as follows:

1. The tax actually imposed exceeds that authorized in the Citizen Petition that created the Monorail Authority because, in many individual cases, its method of calculation leads to a tax higher than 1.4% of the fair market value of the vehicle in question.
2. The valuation method utilized in the tax calculation is “arbitrary, capricious, irrational, and discriminatory” and, therefore, unconstitutional.

3. The fact that the Monorail MVET was levied by a body that largely is not directly answerable to the taxpaying electorate makes it the unconstitutional product of the delegation of a non-delegable legislative function.
4. The Monorail MVET is not a true excise tax but is, in substance, an unconstitutional local property tax.
5. The absence of a meaningful appeal mechanism for taxpayers who wish to dispute their MVET obligation constitutes an unconstitutional denial of due process.

In their motion for summary judgment, the plaintiffs seek a dispositive ruling in their favor on their third cause of action above. The defendants oppose this motion and, by their own motion for summary judgment, seek rejection of all five of the plaintiffs' claims and complete dismissal of the case. No party has strongly posited any need to develop the factual record further before resolution of these legal questions.

In the 1930's, the state of Washington first enacted a Motor Vehicle Excise Tax ("MVET"). That tax, imposed upon the use of a motor vehicle on the public roads, has always been calculated based upon the value of the vehicle that was being used. Beginning in 1990, a tax calculation method became codified that involved a depreciation schedule applied to the Manufacturer's Suggested Retail Price for the vehicle in question. This schedule was contained in R.C.W. 82.44.041.

In the 2002 legislative session, new legislation empowered a City Transportation Authority ("CTA") to build and run a monorail system, funding it through imposition of a local MVET based on a vehicle valuation that "must be

consistent with chapter 82.44 RCW". R.C.W. 35.95A.080, 130. That November, in approving Citizen Petition No. 1, Seattle voters created just such an Authority and authorized the imposition of just such a tax (although to be set at a rate no higher than 1.4% rather than the 2.5% the state statute would allow). Coincidentally, in that same election of November 2002, Washington voters repealed R.C.W. 82.44.041 by passing Initiative I-776 and that section was later repealed by the legislature as well.

To fund their monorail, Seattle voters took upon themselves an obligation to pay an MVET calculated at up to 1.4% of the "value" of their vehicles. The word "value" certainly connotes a value-laden concept and there can be reasonable dispute over what it means in different contexts. However, this Court must conclude that Seattle voters approved an MVET calculation that was based upon the statutorily established valuation methodology rather than upon the expectation of a curbside appraisal of each individual Ford or Ferrari with its added dings and dents, woofers and tweeters. That such a tax bite could, in certain cases, result in an amount greater - or lower - than 1.4% of the vehicle's current actual "fair market value" is of no moment. The voters approved a tax to be calculated according to an objective methodology required by law in effect at the time of their vote. Democratic values compel this conclusion.

The administrative efficiencies realized through this valuation methodology (presumably, with some corresponding savings to the taxpayers) make this a reasonable approach that is neither arbitrary nor capricious. The same conclusion is compelled regarding the classifications and exemptions under the

tax. Certainly Seattle residents drive beyond the city limits and, just as certainly, drivers coming from outside Seattle drive on the city's streets. Still, it is Seattle's traffic congestion that the Monorail is intended to alleviate. The lines drawn in this taxation scheme easily survive the minimal scrutiny with due deference that Courts are to give to legislative bodies and the people when it comes to the imposition of such excise taxes.

With the value determination made by application of general descriptors (year, make, model) rather than by kicking the tires of a specific car, the appeal process of the Administrative Procedure Act provides sufficient safeguards and the state and federal constitutions make no additional process due. See, R.C.W. 82.44.065; R.C.W. 34.05.

An excise tax is a tax that is imposed upon the use of property and is to be distinguished from a property tax that is one imposed simply upon the ownership of property. It is agreed between the parties that if the Monorail MVET were to constitute a property tax that applied only to Seattle residents, then it would be void as violative of the constitutional requirement of uniformity applicable to property taxes though not to excise taxes.

In the case of State ex rel. Hansen v. Salter, 190 Wash. 703, 70 P. 2d 1056 (1937), the State Supreme Court addressed the constitutionality of "an act levying an excise tax on 'Private Motor Vehicles'" that had been imposed "'for the privilege of using' any private motor vehicle". Although the tax was calculated based upon the value of an owned vehicle, the Court held the tax to be a valid excise tax and not a tax on the ownership of the personal property. Although the

aforementioned Fords have changed considerably in the intervening 68 years, the legal analysis has not. A Seattle resident who wishes to own an expensive show car (say, a 1937 Ford Cabriolet) but not to license it for use it on the public roads would incur no Monorail MVET obligation. Consistent with its label, the Monorail MVET is an excise tax and not a property tax.

The Monorail Board is presently made up of nine members, only two of whom are directly elected to serve in that capacity. The remaining members are appointed by various elected officials or by the Board itself. Plaintiffs assert that for this Board to exercise discretion over when and how the Monorail MVET is imposed constitutes a legislative function that has been unconstitutionally usurped by (or ceded to) a non-legislative body.

As Justice Richard Sanders has written:

> The Legislature may not constitutionally grant the power of taxation to persons over whom the taxpayers can exercise no control. State ex rel. Tax Comm'n v. Redd, 166 Wash. 132, 6 P. 2d 619 (1932). Any delegation of the taxing power is impermissible unless the Legislature clearly defines the purpose of the delegation and creates procedural safeguards to control arbitrary administrative action.

Granite Falls Library Capital Facility Area v. The Taxpayers of Granite Falls Library Capital Facility Area, 134 Wn. 2d 825, 845, 953 P. 2d 1150 (1998) (Justice Sanders dissenting).

In the Granite Falls Library case, the majority of the Supreme Court upheld against a similar challenge the library district's implementation of a voter-

approved tax. The facts of the case before this Court present stronger safeguards than those found sufficient in the Granite Falls Library case.

In the monorail enabling legislation, it was specifically provided that an approved city transportation authority would be considered a "municipal corporation", an "independent taxing authority" and a "taxing district". R.C.W. 35.95A.020. That chapter further requires that the voters must approve the "size and selection of the governing body of the authority, which governing body may be appointed or elected". R.C.W. 35.95A.030. Once fully in place, that authority "has the power to levy and collect a special excise tax not exceeding two and one-half percent on the value of every motor vehicle owned by a resident of the authority area for the privilege of using a motor vehicle". R.C.W. 35.95A.080(1). The Legislature further provided that any "proposed taxes established pursuant to this chapter … must be approved by a majority vote of the electors residing within the proposed authority area." R.C.W. 35.95A.020(2). That general point bore repeating in the section in which the Legislature specifically authorized a local monorail MVET. "Before any authority may impose any of the taxes authorized under this section, the authorization for imposition of the taxes must be approved by the qualified electors of the authority area." R.C.W. 35.95A.080(5).

In voting for Citizen Petition No. 1, Seattle voters, in accordance with the above state laws, determined the size and selection of the SMP Board and approved a 1.4% MVET. When the Monorail Authority, a duly designated "taxing authority", exercised its discretion with regard to the timing of the MVET, it did so

through its Board. As required, the voters had given their specific assent both to the composition of this Board and to its action.

This Court cannot find the slogan "taxation without representation" to fit these circumstances. To the contrary, consistent with the statutory safeguards and constitutional requirements, the challenged taxation was specifically and directly approved by the citizenry who would be paying it.

Based upon the foregoing, it is HEREBY ORDERED:

1. The plaintiffs' motion for summary judgment is DENIED;
2. The plaintiffs' motion for preliminary injunction is DENIED;
3. The defendants' motion for summary judgment is GRANTED;
4. The plaintiffs' claims are DISMISSED WITH PREJUDICE;
5. The plaintiffs' motion to compel production of evidence is stricken as moot;
6. The parties are directed to prepare and present an agreed order reciting all of the materials submitted to the Court in connection with all of these motions and to take whatever other steps are reasonably necessary to expedite appellate review of the issues raised herein.

DATED this 4th day of April 2005.

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HON. WILLIAM L. DOWNING